

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARIA D. RIVERA,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

:
: Index No. 13-CV- 4559-KBF
:

ANSWER

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Defendant FIA Card Services, N.A., i/s/h/a Bank of America, N.A., (hereinafter, the “Defendant”), by its attorneys Reed Smith LLP, answers the Complaint of plaintiff Maria D. Rivera (hereinafter, the “Plaintiff”), dated July 1, 2013 (the “Complaint”), as follows:

AS TO THE PRELIMINARY STATEMENT

1. The allegations of paragraph “1” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the allegations.

2. The allegations of paragraph “2” of Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the allegations.

3. The allegations of paragraph “3” of the Complaint sets forth legal conclusions to which no responsive pleading is required. The Defendant refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the allegations.

4. The allegations of paragraph “4” of the Complaint sets forth legal conclusions to which no responsive pleading is required. The Defendant refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the allegations.

5. The allegations of paragraph “5” of the Complaint sets forth legal conclusions to which no responsive pleading is required. The Defendant refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the allegations.

AS TO THE PARTIES

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “6” of the Complaint.

7. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “7” of the Complaint.

8. The allegations of paragraph “8” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the allegations.

9. The allegations of paragraph “9” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the allegations.

10. Defendant admits the allegations contained in paragraph “10” of the Complaint.

11. The allegations of paragraph “11” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

12. The allegations of paragraph “12” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

AS TO JURISDICTION AND VENUE

13. The allegations of paragraph “13” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

14. The allegations of paragraph “14” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

AS TO THE FACTS

15. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “15” of the Complaint.

16. Defendant admits that in 2012 the Plaintiff was issued a credit card ending in 1036.

17. Defendant denies the allegations contained in paragraph “17” of the Complaint.

18. Defendant denies the allegations contained in paragraph “18” of the Complaint.

19. Defendant admits that the bank account ending in 2248 was opened in May of 2012.

20. Defendant admits the allegations contained in paragraph “20” of the Complaint.

21. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “21” of the Complaint.

22. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “22” of the Complaint.

23. Defendant denies the allegations contained in paragraph “23” of the Complaint.

24. Defendant admits that the Plaintiff reported fraudulent activity in May of 2012.

25. Defendant admits the allegations contained in paragraph “25” of the Complaint.

26. Defendant admits that the Plaintiff received a credit for \$177.39, however, Defendant denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

27. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “27” of the Complaint.

28. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “28” of the Complaint.

29. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “29” of the Complaint.

30. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “30” of the Complaint.

31. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “31” of the Complaint.

32. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “32” of the Complaint.

33. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “33” of the Complaint.

34. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “34” of the Complaint.

35. Defendant admits that in August 2012, Plaintiff was issued a new credit card (account ending in 0895).

36. Defendant admits the allegations contained in paragraph “36” of the Complaint.

37. Defendant admits the allegations in paragraph “37” of the Complaint.

38. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “38” of the Complaint.

39. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “39” of the Complaint.

40. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “40” of the Complaint.

41. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “41” of the Complaint.

42. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “42” of the Complaint.

43. The letter referenced in paragraph “43” of the Complaint speaks for itself, the Defendant denies the remaining allegations contained in paragraph “43” of the Complaint.

44. Defendant admits the allegations contained in paragraph “44” of the Complaint.

45. The letters referenced in paragraph “45” of the Complaint speak for themselves, the Defendant denies the remaining allegations contained in paragraph “45” of the Complaint.

46. The letter referenced in paragraph “46” of the Complaint speaks for itself, the Defendant denies the remaining allegations contained in paragraph “46” of the Complaint.

47. Defendant denies the allegations contained in paragraph “47” of the Complaint.

48. Defendant denies the allegations contained in paragraph “48” of the Complaint.

49. The letters referenced in paragraph “49” of the Complaint speak for themselves, the Defendant denies the remaining allegations contained in paragraph “49” of the Complaint.

50. The letters referenced in paragraph “50” of the Complaint speak for themselves, the Defendant denies the remaining allegations contained in paragraph “50” of the Complaint.

51. The letters referenced in paragraph “51” of the Complaint speak for themselves, the Defendant denies the remaining allegations contained in paragraph “51” of the Complaint.

52. Defendant denies the allegations contained in paragraph “52” of the Complaint.

53. Defendant denies the allegations contained in paragraph “53” of the Complaint.

54. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “54” of the Complaint.

55. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “55” of the Complaint.

56. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “56” of the Complaint.

57. The letters referenced in paragraph “57” of the Complaint speak for themselves, the Defendant denies the remaining allegations contained in paragraph “57” of the Complaint.

58. Defendant denies the allegations contained in paragraph “58” of the Complaint.

59. Defendant denies the allegations contained in paragraph “59” of the Complaint.

60. The allegations of paragraph “60” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

61. The allegations of paragraph “61” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

AS TO THE LEGAL FRAMEWORK

62. The allegations of paragraph “62” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

63. The allegations of paragraph “63” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

64. The allegations of paragraph “64” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

65. The allegations of paragraph “65” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

66. The allegations of paragraph “66” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

67. The allegations of paragraph “67” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

68. The allegations of paragraph “68” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

69. The allegations of paragraph “69” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

70. The allegations of paragraph “70” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

71. The allegations of paragraph “71” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

72. The allegations of paragraph “72” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

73. The allegations of paragraph “73” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

74. The allegations of paragraph “74” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

75. The allegations of paragraph “75” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

76. The allegations of paragraph “76” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

77. The allegations of paragraph “77” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

78. The allegations of paragraph “78” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

79. The allegations of paragraph “79” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

80. The allegations of paragraph “80” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

81. The allegations of paragraph “81” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

82. The allegations of paragraph “82” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

AS TO THE FIRST CLAIM FOR RELIEF

83. Defendant incorporates by reference all of the above paragraphs of this Answer as though fully stated herein.

84. The allegations of paragraph “84” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

85. Defendant denies the allegations contained in paragraph “85” of the Complaint.

86. The allegations of paragraph “86” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law

to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

87. The allegations of paragraph “87” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

AS TO THE SECOND CLAIM FOR RELIEF

88. Defendant incorporates by reference all of the above paragraphs of this Answer as though fully stated herein.

89. The allegations of paragraph “89” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

90. The allegations of paragraph “90” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

91. The allegations of paragraph “91” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

AS TO THE THIRD CLAIM FOR RELIEF

92. Defendant incorporates by reference all of the above paragraphs of this Answer as though fully stated herein.

93. The allegations of paragraph “93” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

94. The allegations of paragraph “94” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

95. The allegations of paragraph “95” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

96. The allegations of paragraph “96” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

97. The allegations of paragraph “97” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

AS TO THE FOURTH CLAIM FOR RELIEF

98. Defendant incorporates by reference all of the above paragraphs of this Answer as though fully stated herein.

99. The allegations of paragraph “99” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

100. Defendant denies the allegations contained in paragraph “100” of the Complaint.

101. The allegations of paragraph “101” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

102. The allegations of paragraph “102” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

AS TO THE FIFTH CLAIM FOR RELIEF

103. Defendant incorporates by reference all of the above paragraphs of this Answer as though fully stated herein.

104. The agreement referenced in paragraph “104” of the Complaint speaks for itself. Defendant denies all remaining allegations contained in paragraph “104” of the Complaint.

105. The agreement referenced in paragraph “105” of the Complaint speaks for itself. Defendant denies all remaining allegations contained in paragraph “105” of the Complaint.

106. The allegations of paragraph “106” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

107. The allegations of paragraph “107” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

108. The allegations of paragraph “108” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is deemed required, Defendant denies the remaining allegations.

109. The allegations of paragraph “109” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is required, Defendant denies the allegations.

AS TO THE SIXTH CLAIM FOR RELIEF

110. Defendant incorporates by reference all of the above paragraphs of this Answer as though fully stated herein.

111. The agreement referenced in paragraph “111” of the Complaint speaks for itself. Defendant denies all remaining allegations contained in paragraph “111” of the Complaint.

112. The agreement referenced in paragraph “112” of the Complaint speaks for itself. Defendant denies all remaining allegations contained in paragraph “112” of the Complaint.

113. The allegations of paragraph “113” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is required, Defendant denies the allegations.

114. The allegations of paragraph “114” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is required, Defendant denies the allegations.

115. The allegations of paragraph “115” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is required, Defendant denies the allegations.

116. The allegations of paragraph “116” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is required, Defendant denies the allegations.

117. The allegations of paragraph “117” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is required, Defendant denies the allegations.

AS TO THE SEVENTH CLAIM FOR RELIEF

118. Defendant incorporates by reference all of the above paragraphs of this Answer as though fully stated herein.

119. The allegations of paragraph “119” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

120. The allegations of paragraph “120” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

121. The allegations of paragraph “121” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court.

122. The allegations of paragraph “122” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is required, Defendant denies the allegations.

123. The allegations of paragraph “123” of the Complaint set forth legal conclusions to which no responsive pleading is required. Defendant respectfully refers all conclusions of law to the Court. To the extent a responsive pleading is required, Defendant denies the allegations.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a cause of action.

SECOND AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred because Plaintiff cannot demonstrate any actual damages.

THIRD AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred by the language of the correspondence between Plaintiff and Defendant.

FOURTH AFFIRMATIVE DEFENSE

At all times, Defendant complied with any and all applicable federal and state statutory and regulatory provisions.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrines of waiver and estoppel.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the documentary evidence.

SEVENTH AFFIRMATIVE DEFENSE

The alleged actions of Defendant were not the proximate cause of any injury or loss suffered by Plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

Defendant is not a proper party to this action.

Further, Defendant reserves the right to amend its Answer and Affirmative Defenses based on any information obtained during discovery.

WHEREFORE, Defendant demands a judgment dismissing the Complaint against it in its entirety with prejudice, together with the costs and disbursements of this action and such other and further relief as the Court may deem just and proper.

REED SMITH LLP

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*Attorneys for Defendant
FIA Card Services, N.A.
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New York, New York
Dated: September 17, 2013

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